

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

<i>In the Matter of</i>	)	
	)	
Federal-State Joint Board on Universal	)	CC Docket No. 96-45
Service	)	
	)	
TO: The Federal-State Joint Board	)	

**REPLY COMMENTS OF NEXTEL PARTNERS, INC.**

Filed by:

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## **SUMMARY**

The initial comments submitted in this proceeding reveal a consensus that growth of the Universal Service Fund (USF) must be controlled. There is no consensus on the causes of Fund growth or how to control rural High Cost support payments. In particular, there is no consensus on what changes should be made to the High Cost support methodology. In general, the wireline interests mistakenly contend that Fund growth can be adequately controlled merely by curtailing support to wireless ETCs. These interests ignore the data showing that the nearly 50% increase in the size of the Fund between 2000 and 2004 is overwhelmingly attributable to wireline ETCs.

In light of the vastly divergent viewpoints of the various constituencies that have commented in this proceeding, as well as the pressing need to control the growth of the USF, the Commission should appoint a new Rural Task Force to develop a cost methodology for use subsequent to the expiration of the current system in June 2006. The Rural Task Force should be representative of the various competing viewpoints and constituencies, including both ILEC and wireless CETC interests. The Rural Task Force should work towards developing a support methodology that will foster the principles of consumer choice, mobility, technological innovation, and the benefits of competition, while sustaining the availability of existing services and controlling growth of the Fund through encouraging cost efficiencies.

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Nextel Partners, Inc. (“Nextel Partners”), by undersigned counsel, submits these Reply Comments in accordance with the August 16, 2004 Public Notice of the Federal-State Joint Board on Universal Service (“Joint Board”) requesting comments on certain of the Commission’s rules relating to high-cost universal service support,<sup>1</sup> and in response to the initial comments submitted in this proceeding. As set forth below, Nextel Partners urges that a Rural Task Force be established to develop a technology-neutral High Cost methodology that will keep the growth of the Universal Service Fund (USF) under control while promoting the principles of Universal Service, including mobility and consumer choice.

**INTRODUCTION**

The comments submitted in this proceeding demonstrate that there is a general consensus that some sort of overhaul of the USF support system, which has existed in its modern form for eight years, is needed to address the problem of ballooning growth in the USF. There is no consensus however on the causes of growth in the Fund or on how to control its growth. The record reveals that there are a number of constituencies with multiple and competing agendas.

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<sup>1</sup> *Public Notice, Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, FCC 04J-2, August 16, 2004 (hereafter, “*Public Notice*”).

In general, the rural incumbent LECs (ILECs) erroneously attempt to blame competitive ETCs (CETCs) for Fund growth, and generally seek to reduce support payments to wireless ETCs with no commensurate reduction in payments to the rural ILECs. In promoting this self-serving position, the ILECs ignore Congress' plainly expressed intent that the universal service mechanisms should not favor one form of technology over another and should promote competition and the buildout of telecommunications services in rural areas so that rural citizens can be on an equal footing with urban citizens in light of the enormous recent advances made in communications technology. The wireless interests on the other hand point out that the major cause of ballooning of the Fund is the growth in support payments to ILECs based on the existing embedded cost mechanisms under which the ILECs are paid for moneys invested to a large extent years before the USF was established in the 1996 Act.

Amidst this cacophony of voices, and as suggested by Nextel Partners in its initial comments, the Commission should establish a new Rural Task Force with fair and adequate representation of all of the constituencies to enable the parties to search for creative and mutually acceptable solutions to the challenges facing the USF.<sup>2</sup> To that end, the parties' deliberations should focus on identifying cost methodologies that promote consumer choice and innovation in the rural markets while sustaining the buildout, upgrading and maintenance of communications systems that serve rural citizens. In particular, the Commission should direct the new Rural Task Force to develop a rural High Cost support methodology consistent with well-established goals of the USF, including the following:

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<sup>2</sup> Comments of Nextel Partners, Inc. at pp. 9-14.

- To provide to citizens living in rural areas access to the same array of telecommunications services that are available to citizens living in urban areas,<sup>3</sup> including advanced services,<sup>4</sup> wireless services and the benefits of mobility;<sup>5</sup>
- To provide rural citizens these services at substantially the same price paid by urban citizens;<sup>6</sup>
- To promote to the greatest extent possible full and fair competition in telecommunications services in rural areas so as to stimulate on a competitively neutral basis continued deployment of communications technologies, including mobile services, at the most efficient price.<sup>7</sup>

**I. THE COMMENTERS ARE DIVIDED AS TO THE APPROPRIATE METHODOLOGY FOR CONTROLLING LONG-RANGE GROWTH IN RURAL HIGH COST SUPPORT.**

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**A. Payments to ILECs are the major source of Fund growth.**

While there is general agreement that changes are needed to control growth of the USF, there is disagreement as to what is causing the rapid growth in rural High Cost support, or as to what to do to control this growth. Many of the ILECs suggest in their comments that the

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<sup>3</sup> See 47 USC § 254 (b) (3).

<sup>4</sup> See 47 USC § 254 (b) (2).

<sup>5</sup> See 47 USC § 254 (b) (7); *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition For Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 1563, 1576 at ¶29 (where the Commission recognized the importance of mobility to rural citizens) and separate statement of Chairman Powell (“We recognize the unique value that mobile services provide to rural consumers....”) (2004) (“*Virginia Cellular*”). Also see *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking at ¶ 63 (rel. June 8, 2004), where the Joint Board recognized that “Deployment of rural wireless infrastructure is an important policy goal.”

<sup>6</sup> See 47 USC §§ 254 (b) (1) and (3).

<sup>7</sup> See 47 USC § 254 (b) (7); *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8801 at ¶ 47 (1997) (“Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”)

designations of CETCs, and particularly wireless CETCs, are the major source of Fund growth,<sup>8</sup> and these ILECs suggest reducing, or even eliminating support to wireless CETCs as a means for controlling growth of the Fund.<sup>9</sup> The contentions of these ILECs are not supported by the published USAC data regarding rural High Cost support payments.<sup>10</sup> As shown in CTIA's comments, the amount of High Cost support received by ILECs grew by 46% from 2000 to 2003, ballooning from \$2.2 billion to over \$3.1 billion.<sup>11</sup> While support payments to CETCs have also grown since 2000 as the result of additional CETC designations, ILECs continue to receive approximately 93% of High-Cost funding.<sup>12</sup> Thus, it is clear from the data reflecting support levels that the support payments to wireless CETCs are not the major source of USF growth.<sup>13</sup> The existing growth in USF High Cost support is predominantly attributable to the dramatic rise in support payments to the ILECs over the past several years.

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<sup>8</sup> See, e.g., Comments of OPASTCO at p. 15; Comments of National Exchange Carrier Association at pp. 10-11; Comments of TDS Telecommunications Corp. at p. 12; Comments of Verizon at pp. 14-15.

<sup>9</sup> See, e.g., Comments of Fred Williamson & Associates at p. 16, n. 22; Comments of Texas Statewide Telephone Cooperative, Inc. at pp. 15-16.

<sup>10</sup> See Comments of CTIA-The Wireless Association (CTIA) at pp. 3-4; Comments of Western Wireless Corporation at pp. 6-8.

<sup>11</sup> Comments of CTIA at pp. 3-4, citing data published in Universal Service Administrative Company 2000 and 2003 Annual Reports.

<sup>12</sup> CTIA Comments at p. 4, citing Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter of 2004, at Appendix HC05 (filed April 30, 2004).

<sup>13</sup> While it has been suggested that as more wireless CETCs become designated by the Commission and the States, wireless CETCs may in the future become a larger factor in accounting for Fund growth, the alarming rate in growth of the Fund since 2000 is directly attributable to *rapidly increasing payments to the ILECs*.

**B. An across-the-board approach is needed to control growth in USF High-Cost support.**

Insofar as rapidly increasing payments to ILECs are the major component of growth in High Cost support, any effort to control Fund growth must necessarily include changes to the High Cost support methodology pursuant to which support to ILECs is computed. Merely curtailing payments to wireless CETCs, as is suggested by some of the ILEC commenters, will do little to check the growth in High Cost USF support. Moreover, curtailing support to wireless CETCs would not serve the public interest and would violate Congressional intent in creating the USF.

In setting up the USF support regime in 1996, Congress expressed its intent that the Fund should be used to bring to rural residents access to the same array of telecommunications services available in urban areas.<sup>14</sup> Congress made clear that “Universal Service” is a fluid and evolving concept,<sup>15</sup> and provided further that the basic principles of Universal Service would grow in response to changes in technology and communications demands of citizens.<sup>16</sup> In recent orders designating wireless CETCs, the Commission has recognized the pervasive need and benefits of access to mobile telecommunications services as a major public interest factor supporting the designations.<sup>17</sup> In addition to “assist[ing] consumers in rural areas who often

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<sup>14</sup> 47 USC § 254 (b) (3).

<sup>15</sup> See 47 USC § 254 (c) (1) (“Universal Service is an evolving level of telecommunications services....”)

<sup>16</sup> See 47 USC § 254 (b) (7), providing that the Universal Service Principles shall include, “Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest convenience and necessity and are consistent with this Act.”

<sup>17</sup> See *Virginia Cellular* at 1576, ¶ 29, and separate statement of Chairman Powell; *Federal-State Joint Board on Universal Service, NPCR, Inc. d/b/a Nextel Partners Petitions For Designation as an Eligible Telecommunications Carrier in the States of Alabama, Florida, Georgia, Pennsylvania, Tennessee, and Virginia, Nextel Partners of Upstate New York, Inc. d/b/a Nextel*



must drive significant distances to places of employment, stores, schools, and other critical community locations .... [and] provid[ing] access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities,”<sup>18</sup> mobile communications are an essential element of protecting homeland security and guarding the public safety during a time of national emergency.<sup>19</sup>

In light of the importance of mobility to the public interest as recently recognized by the Commission, the provision of mobile services to rural citizens must be considered a guiding principle for making public interest determinations affecting Universal Service support.<sup>20</sup> Moreover, unlike wireline systems, which were substantially built out in rural areas with the help of rate based subsidies as well as REA loan programs that were in place by the 1940s,<sup>21</sup> wireless systems have not been substantially built out in many rural areas. The designation and support of wireless CETCs through the USF is addressing this situation. Nextel Partners, for example, will utilize moneys received as a result of its recent ETC designations to build out its system in some areas and bring to many rural citizens, for the first time, access to the services of a national wireless provider.

Accordingly, it is necessary and appropriate to control Fund growth by means of across-the-board changes affecting both ILECs and CETCs, rather than merely by targeting support to

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*Partners Petition For Designation as an Eligible Telecommunications Carrier in the State of New York*, 19 FCC Rcd 16530 at ¶ 18 (2004) (hereafter, “*Nextel Partners Designation Order*”), amended by *Erratum* dated September 13, 2004, 2004 FCC Lexis 5271.

<sup>18</sup> *Id.*

<sup>19</sup> See Comments of Nextel Partners at pp. 5-7.

<sup>20</sup> See 47 USC § 254 (b) (7).

<sup>21</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Notice of Inquiry, 13 FCC Rcd 15280, at ¶ 71 (1998); [www.usda.gov/rus/telecom/rtb/index\\_rtb.htm](http://www.usda.gov/rus/telecom/rtb/index_rtb.htm).

wireless CETCs for curtailment. Adopting an option that affects only wireless CETCs would not only be ineffectual but also would violate Congressional intent and disserve the public interest by curtailing the access of rural citizens to necessary and desired communications services that are prevalent in all urban areas, thus relegating rural citizens—the very persons who the Fund is intended to benefit—to second-class status.<sup>22</sup>

**C. There is wide disagreement as to the appropriate support methodology.**

Some commenters, principally representatives of wireless CETCs, support phasing out the existing embedded cost support mechanism applicable to rural ILECs, and replacing it with a forward looking cost mechanism.<sup>23</sup> These commenters point out the inherent inefficiencies in the existing embedded cost payment mechanism under which carriers receive support based to a large extent on expenditures made, and recovered long ago. As explained by Western Wireless, the current support mechanism is based on factors that “encourage inefficiency, discourage technological innovation, [and] bear little relationship to the actual costs that drive economic decision-making in the real world.”<sup>24</sup>

The ILEC commenters almost universally argue that there should be no change to the support methodology for ILECs and that the existing embedded cost support mechanisms applicable to rural ILECs should be kept in place beyond the June 2006 scheduled expiration date.<sup>25</sup> These commenters appear to base their contention, however, on the work done by the

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<sup>22</sup> See *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier*, PUC Docket No. 22289 at 2 (Texas Public Utility Commission 2000) (“Rural Texans are not second class citizens and should not be deprived of competitive alternatives or access to new technologies.”)

<sup>23</sup> See, e.g., Comments of CTIA; Comments of Western Wireless.

<sup>24</sup> Comments of Western Wireless at p. 14.

<sup>25</sup> A notable exception to this is Iowa Telecommunications Services, Inc (d/b/a Iowa Telecom), which indicates in its comments that it suffers under the current regime since it has very low

Rural Task Force prior to adoption of the current support methodology. Thus, they argue that the Rural Task Force made the right decision when it decided not to recommend forward looking cost methodologies previously, and nothing has changed that would warrant a different recommendation.<sup>26</sup>

These ILEC commenters ignore several changes that now warrant considering an alternative methodology. As discussed above, rural High Cost USF support payments have grown to enormous proportions over the past several years predominantly as a direct result of payments to ILECs based on embedded cost methodology. This is a significant change in circumstances that cannot be ignored, and warrants a careful examination of the existing methodology as well as alternative methodologies in order to find a means to increase efficiencies for all classes of carriers.<sup>27</sup> In addition, several years have passed since the Rural Task Force made its earlier recommendations and during that time there has been significant additional experience developed with regard to the operation of forward looking cost

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embedded costs, and argues instead that rural ILECs should be able to opt out of the current regime and instead be given the choice of receiving support based on forward looking costs. This underscores the inherent anticompetitive intent in the proposals of those ILEC commenters suggesting that wireless CETCs should receive support based on their own embedded costs. *See, e.g.,* Comments of OPASTCO at p. 12; Comments of the Western Telecommunications Alliance at p. 22; Comments of the Home Telephone Company, Inc. and PBT Telecom, Inc. at p. 7. Unlike most ILECs, wireless CETCs do not have extensive embedded costs in many rural areas since their systems are not yet fully deployed in those areas.

<sup>26</sup> *See, e.g.,* Comments of Texas Statewide Telephone Cooperative, Inc. at p. 5 (“FLEC models were deemed ineffective in the *Rural Task Force Order* and nothing has changed in the intervening years”); Comments of the United States Telecom Association at pp. 9-10 (asserting that the use of ILECs’ embedded costs is a “time-tested method” and stating, “USTA agrees with the August 2000 findings of the Rural Task Force”); Comments of GVNW Consulting, Inc. at p. 9-10.

<sup>27</sup> The Fund also has grown, albeit to a lesser extent, as the result of CETC designations, a trend that can be expected to continue, thus underscoring the need to adopt a new across-the-board support methodology that will leave enough growing room for CETCs while continuing to support the incumbent carriers, albeit in a cost efficient manner.

methodologies, at least as they pertain to non-rural ETCs, and several alternative methods exist for consideration.<sup>28</sup> Moreover, the Commission put in place the existing methodology for a predetermined period of five years with the realization that a reassessment would be warranted by that time. In asserting that there is no reason to change the existing inefficient support methodology the ILEC interests seek to have the Commission simply gloss over these changed circumstances in a manner that is not consistent with reasoned administrative rulemaking.

**II. THE COMMISSION SHOULD ESTABLISH A NEW RURAL TASK FORCE TO DEVELOP A NEW SUPPORT METHODOLOGY THAT WILL PROTECT THE PRINCIPLES OF UNIVERSAL SERVICE WHILE ADDRESSING THE PROBLEM OF RAPID GROWTH IN THE USF**

In light of the vastly divergent viewpoints of the various constituencies that have commented in this proceeding, as well as the pressing need to control the growth of the USF, the Commission should appoint a new Rural Task Force to develop a cost methodology for use subsequent to the expiration of the current system in June 2006. The Rural Task Force should be representative of the various competing viewpoints and constituencies, including both ILEC and wireless CETC interests. The Commission should direct the Task Force to undertake a comprehensive analysis of available methodologies and make recommendations for implementing a system that will control Fund growth while protecting the principles of Universal Service. In conducting its work, the Rural Task Force should be guided by the following principles:<sup>29</sup>

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<sup>28</sup> Western Wireless, for example, suggests several different alternative forward looking cost methodologies in its comments. *See* Western Wireless comments at pp. 19-30.

<sup>29</sup> This discussion expands upon the discussion set forth in Nextel Partners' initial comments at pp. 9-14.

**Focus on Consumer.** The overarching goal of Universal Service is to provide benefits to the consumer, rather than to provide subsidies to any carrier or class of carriers.<sup>30</sup> The Rural Task Force should work with this fundamental principle in mind.

**Build Out of Mobile Services.** As discussed above, a fundamental principle of Universal Service is to ensure that rural citizens will have access to the same range of telecommunications services that are available to urban citizens, at reasonably comparable rates.<sup>31</sup> A corollary principle as supported by recent FCC orders designating wireless CETCs is that mobility is in the public interest and that all citizens, including rural citizens, should have access to mobile communications services.<sup>32</sup> Thus, a major goal of the new cost methodology should be to support the build out and deployment of mobile telecommunications services, while continuing the maintenance of existing services.

**Technological Neutrality.** The cost methodology should not favor one type or class of provider over any other, or one type of technology over any other. Instead, the methodology should foster competition between providers, leaving the choice in technologies and providers to the consumer. Additionally, the consumer should not be limited to choosing a single provider or type of technology, but should have the same freedom that urban citizens have to utilize multiple or alternative technologies and providers.

**Efficiencies.** The cost methodology should encourage efficiencies in operations and should discourage carriers from making inefficient investments or expenditures. The Rural Task Force should analyze and address the inherent inefficiencies of the existing embedded cost methodology and undertake an analysis of alternative methodologies in light of those

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<sup>30</sup> *Alenco Communications, Inc. v. FCC*, 201 F.3d 608 (5<sup>th</sup> Cir. 2000).

<sup>31</sup> 47 USC § 254 (b) (3).

<sup>32</sup> See n. 17, above and accompanying text.

inefficiencies. Over the long term, a cost methodology based on efficiencies will greatly reduce or even eliminate the need for large support payments for maintenance and this should be a specific goal. The Commission should make clear that cost efficiency is a principle of Universal Service.

In sum, the Rural Task Force should work towards developing a support methodology that will foster the principles of consumer choice, mobility, technological innovation, and the benefits of competition, while sustaining the availability of existing services and controlling growth of the Fund through encouraging cost efficiencies.

### **CONCLUSION**

For the foregoing reasons, Nextel Partners respectfully urges the Commission to establish a Rural Task Force to develop a new High Cost support methodology for rural ETCs in accordance with the principles set forth above.

Respectfully submitted,

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